

## **REMARKS**

The Applicant has studied the Office Action mailed January 3, 2007 and has made amendments to the claims. Claims 3-5, 10-12 and 16-18 are amended. No new claims are added. By virtue of this amendment, claims 3-7, 10-14 and 16-20 are pending. It is submitted that the application, as amended, is in condition for allowance. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks are respectfully requested. In the Office Action the Examiner:

In the Office Action, the Examiner:

- rejected claims 3 and 10 under 35 U.S.C. § 112, second paragraph for improper antecedent basis;
- rejected claims 3, 6-8, 10, 13, 14, 16, and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over Ehrlich et al (U.S. 2002/0111873) in view of Cansler et al. (U.S. 6,725,257); and
- rejected claims 4, 5, 11, 12, 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Ehrlich et al (U.S. 2002/0111873) in view of Cansler et al. (U.S. 6,725,257) and further in view of Maritzen et al. (US 2002/0052797).

### **Rejection of Claims Under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph**

As noted above, the Examiner rejected claims 3 and 10 under 35 U.S.C. § 112, second paragraph for improper antecedent basis. Claims 3 and 10 have been carefully amended to distinctly claim the subject matter which the applicants regard as their invention. Specifically the antecedent basis for “the second web site” has been amended to recite “a second web site”. No new matter has been added. Accordingly, the Applicant respectfully submits that the Examiner’s rejection under 35 U.S.C. §112, 2<sup>nd</sup> paragraph has been overcome.

### **Rejection of Claims Under 35 U.S.C. §103(a) in view of Ehrlich and Cansler**

As noted above, the Examiner rejected claims 3-8, 10, 13, 14, 16, and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over Ehrlich et al. (U.S. 2002/0111873) in view of Cansler et al. (U.S. 6,725,257). As an initial matter claim 8 were previously cancelled in a previous office action and

the Examiner's rejection is considered moot. Further, independent claims 3, 10, and 16 have been amended to distinguish over Ehrlich taken along and/or in view of Cansler. Specifically independent claim 3 recites *inter alia*

A method on a web site for pricing a product and/or service, the method comprising:

receiving an order for a product and/or service for sale on a first web site, wherein the product and/or service is available for purchase in a plurality of one or more configurations;

reading at least one competitor's pricing information collected from at least a second web site for each of the configurations;

before presenting a selling price to a buyer using the first website, calculating the selling price for each of the configurations of the product and/or service based on the competitor's price as follows:

in response to the competitor's price being higher than a highest price that a market will bear, set the selling price to the highest price that the market will bear;

in response to the competitor's price being; i) lower than the highest price that the market will bear and ii) higher than a lowest profitable price at the first web site, set the selling price at the competitor's price;

in response to the competitor's price being lower than the lowest profitable price at the first web site, set the selling price at the lowest profitable price; and

presenting each of the configurations of the product and/or service which has been ordered for the selling price which has been calculated based on the competitor's price.

Support for this amendment is found at page 17-19 and FIGs 4 and 5. No new matter has been added.

Unlike Ehrlich, where a price is presented to a user of a shopping cart and the user compares offers to the shopping cart from other sites, the present invention has the desirable business goal of keeping purchasers on a host website and "before presenting a selling price to a buyer using the first website, calculating the selling price for each of the configurations of the product and/or service based on the competitor's price as follows: [...]" Ehrlich in contrast teaches at par. [0055] through par. [00073] that a price is quoted, before the shopping cart is detached from the host website and a price comparison made at a competitor's website by the user. The present invention sets the sales price before presenting the sales price to the buyer using the website. In the current invention, the sales

price is presented to the buyer using the website “presenting each of the configurations of the product and/or service which has been ordered for the selling price which has been calculated based on the competitor’s price.” Accordingly, independent claim 3 distinguishes over Ehrlich take alone and/or in view of Cansler for at least this reason.

Further, Applicants submit that the combination of Ehrlich with Cansler *teaches away* from “before presenting a selling price to a buyer using the first website, calculating the selling price for each of the configurations of the product and/or service based on the competitor’s price as follows: [...]”. As previously discussed, Ehrlich taken alone and/or in combination with Cansler presents a first price to the user of the website before presenting competing prices. This combination is inoperable to provide “before presenting a selling price to a buyer using the first website, calculating the selling price for each of the configurations of the product and/or service based on the competitor’s price as follows: [...]”. See In re Spinnoble, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969) (references teach away from combination if combination produces seemingly inoperative device); see also In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (inoperable modification teaches away). Accordingly, independent claim 3 distinguishes over Ehrlich take alone and/or in view of Cansler for at least this reason.

Continuing further, the present invention before presenting a selling price to a buyer using the first website, calculating the selling price for each of the configurations of the product and/or service based on the competitor’s price as follows:

in response to the competitor’s price being higher than a highest price that a market will bear, set the selling price to the highest price that the market will bear;

in response to the competitor’s price being; i) lower than the highest price that the market will bear and ii) higher than a lowest profitable price at the first web site, set the selling price at the competitor’s price;

in response to the competitor’s price being lower than the lowest profitable price at the first web site, set the selling price at the lowest profitable price;”

This type of calculation of selling price is not taught nor suggested by Ehrlich. Accordingly, independent claim 3 distinguishes over Ehrlich take alone and/or in view of Cansler for at least this reason as well.

Independent claims 10 and 16 have been amended to recite similar limitations as independent claims 3. The Applicant believes that independent claims 10 and 16 of the present invention distinguishes over Ehrlich taken alone and/or in view of Cansler for at least this reason as well for the same reasons set forth hereinabove. Accordingly, the Applicant respectfully submits that the Examiner's rejection under 35 U.S.C. §103(a) has been overcome.

For the foregoing reasons, independent claims 3, 10, and 16 distinguish over Ehrlich taken alone and/or in view of Cansler. Claims 3, 6-7, 13, 14, 16, and 19-20 depend from claims 1 and 10 respectively, since dependent claims contain all the limitations of the independent claims, claims 6-7, 13, 14, 16, and 19-20 distinguish over Ehrlich taken alone and/or in view of Cansler, as well, and the Examiner's rejection should be withdrawn.

#### **Rejection of Claims Under 35 U.S.C. §103(a) in view of Ehrlich and Cansler and Maritzen**

As noted above, the Examiner rejected claims 4, 5, 11, 12, 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Ehrlich et al. (U.S. 2002/0111873) in view of Cansler et al. (U.S. 6,725,257) and further in view of Maritzen et al. (US 2002/0052797). The Applicant believes that the amended independent claims 3, 10, and 16 of the present invention should be allowed for at least the reasons previously stated hereinabove. Claims 4, 5, 11, 12, 17 and 18 depend from claims 3, 10 and 16 respectively, since dependent claims contain all the limitations of the independent claims, claims 4, 5, 11, 12, 17 and 18 distinguish over Ehrlich taken alone and/or in view of Cansler and/or in view of Maritzen, as well, and the Examiner's rejection should be withdrawn.

The prior art made of record and not relied upon was reviewed by the Applicant and is not considered pertinent to Applicant's disclosure.

#### **CONCLUSION**

In this Response, Applicants have amended certain claims. In light of the Office Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicant respectfully submit that the claim amendments do not limit the range of any permissible equivalents.

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR § 1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment is limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 50-0510.

PLEASE CALL the undersigned attorney at (561) 989-9811 should the Examiner believe a telephone interview would help advance prosecution of the application.

Respectfully submitted,

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